

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 14-0070

In re: Daniel S. McClellan,
Respondent

Default Decision and Order

Preliminary Statement

This disciplinary proceeding was instituted under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*), by a complaint filed on February 6, 2014, by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, alleging that Respondent Daniel S. McClellan willfully violated the Act and the regulations promulgated thereunder (9 C.F.R. § 201.1 *et seq.*).

The Complaint and a copy of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130) (rules of practice) were served upon respondent by certified mail on February 14, 2014. Respondent was informed in the complaint and the accompanying letter of service that an answer should be filed pursuant to the rules of practice and that failure to answer would constitute an admission of all the material allegations contained in the complaint and a waiver of hearing.

As Respondent failed to file an answer within the time period prescribed by the rules of practice, the following Findings of Fact, Conclusions of Law and Order will be entered pursuant to section 1.139 of the rules of practice applicable to this proceeding (7 C.F.R. § 1.139).

Findings of Fact

1. Daniel S. McClellan, referred to herein as the respondent, is an individual with a mailing address in Fort Meade, Florida. Respondent is, and at all times material herein was:

(a) Engaged in the business of a market agency buying and selling livestock on a commission basis in commerce; and

(b) Engaged in the business of a dealer buying and selling livestock in commerce;

(c) Registered with the Secretary of Agriculture as a market agency to buy and sell livestock on a commission basis in commerce, and registered as a dealer to buy and sell livestock in commerce. Respondent's registration expired effective August 31, 2013 when he failed to file his annual report. Respondent was served with notice of the expiration by certified mail on September 16, 2013.

2. During the period from October 2012 through July 2013, in 38 transactions involving the purchase of a total of 1,911 head of livestock from four different livestock auction markets, for an approximate purchase price of \$778,525.60, Respondent failed to pay, when due, the full amount of the livestock purchase prices within the time period required by the Act. For each of these transactions, Respondent remitted payment between five and twenty days late.

3. Between May, 2013, and July, 2013, Respondent failed to have and maintain sufficient funds on deposit and available in the account upon which checks were drawn to pay for livestock purchases by issuing four insufficient funds checks to three livestock markets in payment for livestock purchases.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. Respondent willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a) and 228b) and section 201.43 of the regulations (9 C.F.R. § 201.43).

Order

1. Respondent, Daniel S. McClellan, his agents and employees, directly or through any corporate or other device, in connection with his activities subject to the Act, shall cease and desist from:

- a. Failing to pay the full purchase price for livestock purchases;
- b. Failing to pay, when due, the full purchase prices for livestock purchases; and
- c. Issuing checks in purported payment for livestock purchases without having sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented.

2. Respondent is prohibited from registering or operating as a registrant under the Act for a period of two (2) weeks.

3. Respondent is assessed a civil penalty in the amount of ten thousand five hundred dollars (\$10,500.00).

4. This decision shall become final and effective without further proceedings 35 days after the date of service upon respondents, unless it is appealed to the Judicial Officer by a party to the proceeding within 30 days pursuant to Section 1.145 of the rules of practice (7 C.F.R § 1.145).

Copies of this Decision and Order shall be served upon the parties.

April 25, 2014

Peter M. Davenport

Peter M. Davenport
Chief Administrative Law Judge

